



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

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Portable Privies, Inc.
Johnson Corner Road
Lyndeborough, NH 03242

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 02-007**

March 19, 2002

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Portable Privies, Inc, pursuant to RSA 485-A:22, V and Env-C 603.06. The Division is proposing that fines totaling \$10,000 be imposed against Portable Privies, Inc. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Portable Privies, Inc. is a NH Corporation having a mailing address of Johnson Corner Road, Lyndeborough, NH 03242.

III. Summary of Facts and Law Supporting Claims

1. Pursuant to RSA 485-A:4, XVI-a, DES regulates the removal, transportation, and disposal of septage through a permit system. Pursuant to RSA 485-A:6, X-a, the Commissioner of DES has adopted Env-Ws 1600 to implement this program.
2. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations relating to the septage management program. Pursuant to this section, the Commissioner has adopted Env-C 603.06 to establish the schedule of fines for such violations.
3. Mr. Laurent Boisvert is a licensed septage hauler in New Hampshire, No. NHS491. Mr. Boisvert is the principal of Portable Privies Inc. ("PPI"), a portable toilet business operated from Mr. Boisvert's home on Johnson Corner Rd., Lyndeborough, NH ("the Property").
4. Division personnel inspected the Property on March 3, 2000. During this inspection, Division personnel observed septage discharged to the ground at the Property. In addition, solid waste, including plastic bottles, were disposed on the ground at the Property.

5. Env-Ws 1602.17 defines septage management as “the practice of supervising, controlling, or undertaking any septage activity(ies) regulated under these rules, including transporting, land applying, stockpiling, treating, processing or otherwise disposing.”

6. Env-Ws 1602.09 defines septage disposal as “final discharge, deposit, injection, or dumping, spilling, leaking, incinerating, or placing of septage into or onto any land so that such septage or any constituent thereof may enter the environment, be emitted into the air, or be discharged into any surface water or groundwater. Disposal includes land application.”

7. Discharging septage to the ground constitutes septage management regulated by Env-Ws 1600

8. Env-Ws 1604.02 requires any person who wishes to manage septage to obtain a site or facility permit.

9. PPI does not have a site or facility permit as required by Env-Ws 1604.02

10. Env-Ws 1605.10 requires licensed septage haulers to maintain records of each load of septage transported for at least five years after the expiration of the hauler’s license. Information required to be kept includes:

- (1) The date received or picked up;
- (2) The name and address of the client(s);
- (3) The volume of the septage transported, in gallons;
- (4) The site, facility, or wastewater treatment facility to which the load was discharged; and
- (5) The date on which the load was discharged.

11. The Division issued Letter of Deficiency #WD WEB 00-15 (“the LOD”) on April 14, 2000 requesting PPI to immediately cease disposal of septage on the Property and to remove and properly dispose all septage located on the Property. The LOD also requested PPI to submit a closure plan indicating how the site was be remediated and to notify DES when the remediation was complete.

2. PPI did not submit a report indicating the remediation was complete.

13. Division personnel inspected the Property a second time on April 30, 2001. During this inspection, Division personnel observed disposal of septage on the ground at the Property. Division personnel also determined PPI was not maintaining hauling and disposal records as required by Env-Ws 1605.10.

14. DES issued Administrative Order No. WD 01-20 (“the Order”) on May 23, 2001 to require PPI to immediately cease and desist all septage disposal activities on the Property, clean up all areas on the Property where illegal disposal of septage had occurred, and notify DES that the remediation action has been completed, and by June 1, 2001, submit the following to DES:

- a. Copies of signed agreements with septage facilities/sites and wastewater treatment facilities accepting septage for disposal from PPI; and

- b. Copies of signed agreements with all septage haulers who may be hauling septage from PPI to an appropriate septage disposal site/facility, in the event PPI cannot find a DES approved septage disposal facility willing to take PPI waste for disposal.
15. The Order also required PPI to submit septage hauling records as they relate to pumping and hauling septage from PPI on a bi-weekly basis beginning Friday, June 1, 2001 and ending December 31, 2001 and to include all information required by Env-Ws 1605.10(b).
16. Division personnel inspected the Property a third time on June 20, 2001. During this inspection Division personnel noted that disposal activities had ceased and the majority of the septage solids had been raked into a pile consisting of approximately 3 cubic yards of material. Division personnel instructed PPI to continue to rake up the solids, and to place the material on a tarp and cover it until an adequate disposal solution could be found.
17. Division personnel inspected the Property a fourth time on June 25, 2001. During this inspection, Division personnel confirmed that the material was placed on a tarp and covered. Further, Division personnel took soil samples from the original disposal area to determine that the area had been remediated and that no further work was required. Division personnel reminded PPI of the requirement in the Order to submit bi-weekly hauling records.
18. As of the date of this document, PPI has not yet removed the stockpiled septage solids from the Property. In addition, PPI has not submitted the required bi-weekly hauling records.

IV. Violations Alleged and Proposed Administrative Fines

1. PPI violated Env-Ws 1604.02 by not obtaining a facility permit prior to disposing septage on the Property. For this violation, Env-C 603.06(d) specifies a fine of \$2,000 per calendar month or portion thereof that septage is managed without a permit. At this time the Division is seeking a fine for one month for a total fine of \$2,000.
2. PPI has violated Administrative Order No. WD 01-20 by not properly disposing of the stockpiled septage solids from the Property. For this violation, Env-C 603.08(a) specifies a fine of \$2,000 per calendar month or portion thereof that compliance is not achieved after the deadline specified in the order for each provision of the order not complied with. At this time, the Division is seeking a fine for 2 months for a total fine of \$4,000.
3. PPI has violated Administrative Order No. WD 01-20 by not submitting records to the Division. For this violation, Env-C 603.08(a) specifies a fine of \$2,000 per calendar month or portion thereof that compliance is not achieved after the deadline specified in the order for each provision of the order not complied with. At this time the Division is seeking a fine for 2 months for a total fine of \$4,000.

The total fine being sought is \$10,000

V. Required Response, Opportunity for Hearing

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than April 10, 2002 using the enclosed colored form.

1. If PPI would like to have a hearing, please sign the appearance section of the colored form and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form. A Notice of Scheduled Hearing will be issued.

2. If PPI chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If PPI wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate PPI's interest in settling.

PPI is not required to be represented by an attorney. If PPI chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that PPI committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that PPI committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that PPI proves, by a preponderance of the evidence**, applies in this case:

The violation was a one-time or non-continuing violation, **and** PPI did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** PPI did not benefit financially, whether directly or indirectly, from the violation.

- 2 At the time the violation was committed, PPI was making a good faith effort to comply with the requirement that was violated.

- 3 PPI has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to PPI's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that PPI committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is PPI's opportunity to present testimony and evidence that PPI did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If PPI has any evidence, such as photographs, business records or other documents, that PPI believes show that PPI did not commit the violation(s) or that otherwise support PPI's position, PPI should bring the evidence to the hearing. PPI may also bring witnesses (other people) to the hearing to testify on PPI's behalf.

If PPI wishes to have an informal meeting to discuss the issues, PPI must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If PPI has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

COPY

Harry T. Stewart, P.E., Director
Water Division

Enclosure (*NHDES Fact Sheet #CO-2000*)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
Mark Harbaugh, Enforcement Attorney